

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE BEHR DAYTON THERMAL
PRODUCTS, LLC,

:

:

Case No. 3:08-cv-326

JUDGE WALTER H. RICE

ORDER APPROVING PROPOSED CLASS NOTICE (DOC. #319);
PLAINTIFFS TO PROVIDE NOTICE TO PUTATIVE CLASS WITHIN 30
DAYS

The Court APPROVES the proposed Class Notice submitted by the parties, Ex. A to Doc. #319. Plaintiffs shall provide the Class Notice to the putative class consistent with the methods proposed by the parties. *See* Doc. #319, PageID#10087. More specifically, the Class Notice shall be published on a website, and be provided electronically to clients where possible. If electronic notice is not possible, class members will be informed of the website on which the Court-approved notice is published through an appropriate postcard mailer and multiple advertisements in the *Dayton Daily News*.

As set forth in the Second Amended Scheduling Order, Doc. #330, Plaintiffs shall provide class notice to the putative class within 30 days of the date of this Order.

Date: April 29, 2021

Handwritten signature of Walter H. Rice in black ink.

WALTER H. RICE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

IN RE BEHR DAYTON THERMAL
PRODUCTS, LLC

Case No. 03:08-cv-00326 (WHR)

[PROPOSED] CLASS NOTICE

If, on or after April 1, 2006, you owned property in an area alleged to have vapor intrusion arising from certain volatile organic compounds, a pending lawsuit may affect your rights.

A court authorized this notice. This is not a solicitation from a lawyer.

- In 2008, four residents of the McCook Field neighborhood of Dayton filed a class-action lawsuit against Chrysler LLC, now known as Old Carco LLC (“Old Carco”), Behr Dayton Thermal Products LLC and Behr America, Inc., now known, respectively, as MAHLE Behr Dayton LLC and MAHLE Behr USA, Inc. (collectively “Behr”), and Aramark Uniform & Career Apparel (“Aramark”). In that lawsuit, the four residents alleged they had experienced vapor intrusion from certain volatile organic compounds (VOCs) originating from underground plumes¹. The lawsuit is pending in the United States District Court of the Southern District of Ohio and presided over by the Honorable Walter E. Rice, U.S.D.J., in Dayton, Ohio.
- The Court has certified certain issues (the “Certified Issues”) to be determined on a classwide basis, i.e., as to all individuals who owned property (whether commercial, tax exempt or residential) in the area in question at any time on or after April 1, 2006. A jury trial of the Certified Issues is scheduled to commence July 26, 2021 (the “Issues Trial”). The Certified Issues to be decided at the Issues Trial are identified under Question 3 in this notice.
- The Court has not decided whether Old Carco, Behr or Aramark did anything wrong. And, each of them has denied liability for each of the Certified Issues to be determined at the Issues Trial.
- There is no money available now, and no guarantee that there ever will be. At the conclusion of the Issues Trial, depending on the results, any individual who owned property in the areas in question may have to commence their own lawsuit against Old Carco, Behr, and/or Aramark if they want to obtain any financial compensation. However, your legal rights are affected by the upcoming Issues Trial, and **you have a choice to make now.**

¹ You can find general information on vapor intrusion at <https://www.epa.gov/vaporintruion/what-vapor-intrusion>. You can find information about the alleged plumes at https://response.epa.gov/site/site_profile.aspx?site_id=5302.

EXHIBIT A

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
DO NOTHING.	<p>Stay in this lawsuit. Await the outcome. Give up certain rights.</p> <p>If you do nothing, you will be bound by the outcome of the Issues Trial. You will be able to use the findings a jury makes on the Issues that are favorable to the Plaintiffs in a future proceeding to determine whether you are entitled to compensation. You will give up any right to challenge a final determination of the Issues that is unfavorable to the Plaintiffs. You can choose to be represented by the lawyers identified below (“Plaintiffs’ Counsel”) or hire another lawyer who has not been involved in the litigation.</p>
ASK TO BE EXCLUDED.	<p>Get out of this lawsuit. Get no benefits from it. Keep rights.</p> <p>If you ask to be excluded from the lawsuit and a determination is made on any of the certified issues at or before the Issues Trial, you won’t be bound by that finding. You will have to bring your own lawsuit and prove your entire case, including the issues to be decided at the Issues Trial.</p>

- Your options are explained in this notice. To ask to be excluded, you must request to be excluded before **[Date]** or you will be bound by the result of the Issues Trial.
- Lawyers must prove the Certified Issues against Old Carco, Behr, and/or Aramark at the Issues Trial set to start July 26, 2021.
- Any questions? Read on and visit **[website]**.

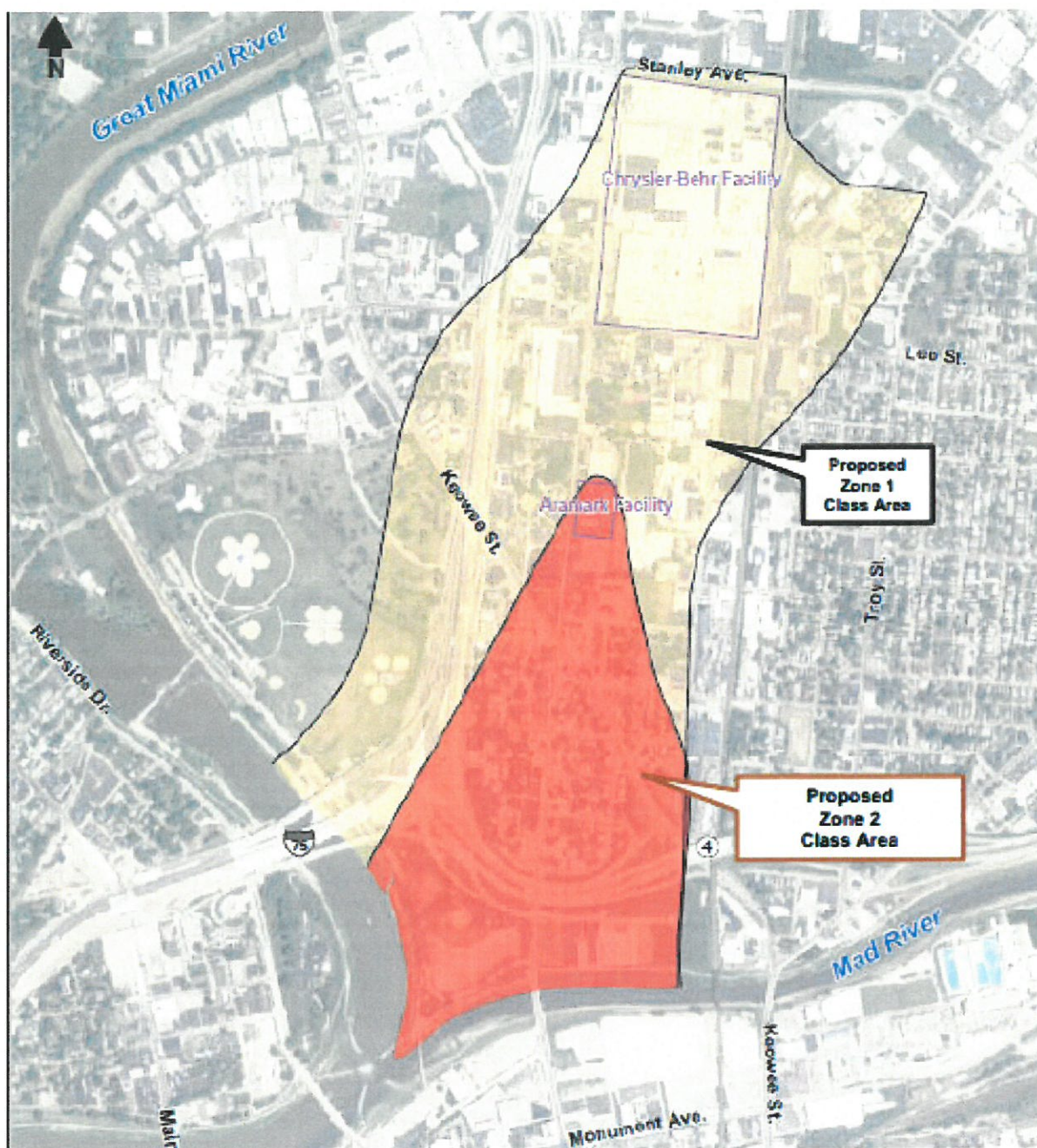
WHAT THIS NOTICE CONTAINS

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BASIC INFORMATION

1. Why did I get this notice?

Property records show that you currently or previously owned property in one of the areas where the plaintiffs bringing this lawsuit allege that Old Carco, Behr, and/or Aramark is responsible for the presence of vapor intrusion from certain volatile organic compounds. The areas are shaded in yellow and red in the map below. The Court has allowed, or “certified,” the Certified Issues identified below, which will be decided as to a class of property owners who do not opt out of the proceedings. You have legal rights and options that you may exercise before the Court holds a trial to resolve the answer to those certified issues. Judge Walter Herbert Rice, of the United States District Court for the Southern District of Ohio, is overseeing this lawsuit. The lawsuit is known as *In re Behr Dayton Thermal Products, LLC*, Case No. 3:08-cv-326-WHR.



2. What is this lawsuit about?

This lawsuit is about whether Old Carco, Behr, and/or Aramark bear responsibility for alleged property damages caused by vapor intrusion related to an alleged groundwater plume that contains trichloroethylene (“TCE”), a carcinogen, and tetrachloroethylene (“PCE”), a probable carcinogen.

Old Carco, Behr, and Aramark each deny the claims alleged against them and specifically deny that they bear responsibility for the vapor intrusion in question.

3. What are the certified issues in this lawsuit?

The Court has certified the following seven issues (the “Certified Issues”) for classwide treatment under Federal Rule of Civil Procedure 23(c)(4). The findings that the Court makes on the Certified Issues will be binding on any individual who: (1) receives this notice by any court-approved means; (2) does not ask to be excluded; and (3) owned property on or after April 1, 2006 in one of the areas where the plaintiffs bringing this lawsuit believe Old Carco, Behr, and/or Aramark is responsible for vapor intrusion related to the presence of volatile organic compounds. Old Carco, Behr, and Aramark object to a trial on the Certified Issues and to the wording of some or all of them. The Certified Issues are:

1. Each Defendant's role in creating the contamination within their respective Plumes, including their historical operations, disposal practices, and chemical usage;
2. Whether or not it was foreseeable to Chrysler and Aramark that their improper handling and disposal of TCE and/or PCE could cause the Behr-DTP and Aramark Plumes, respectively, and subsequent injuries;
3. Whether Chrysler, Behr, and/or Aramark engaged in abnormally dangerous activities for which they are strictly liable;
4. Whether contamination from the Chrysler-Behr Facility underlies the Chrysler-Behr and Chrysler-Behr-Aramark Class Areas [identified as Zone 1 and Zone 2, respectively, on the map above];
5. Whether contamination from the Aramark Facility underlies the Chrysler-Behr-Aramark Class Area;
6. Whether Chrysler and/or Aramark's contamination, and all three Defendants' inaction, caused class members to incur the potential for vapor intrusion; and
7. Whether Defendants negligently failed to investigate and remediate the contamination at and flowing from their respective Facilities.

4. What is a certified issue?

This lawsuit is a class action as to the Certified Issues only. The Court has found that it would be efficient to resolve certain issues among all current and former owners of property in the area in question. When these issues are decided by a jury (subject to appellate review of any jury verdict), the final answers will forever bind any individual who: (1) receives this notice; (2) does not ask to be excluded; and (3) owned residential, commercial, or tax -exempt property on or after April 1, 2006 in

one of the areas where the plaintiffs bringing this lawsuit believe Old Carco, Behr, and/or Aramark is responsible for the presence of vapor intrusion related to volatile organic compounds.

THE CLAIMS IN THE LAWSUIT

5. What does the lawsuit complain about?

The plaintiffs allege that Old Carco and Aramark released TCE and PCE into the environment at their nearby facilities, and that neither Aramark, Old Carco, nor Behr properly investigated or remediated the resulting contamination from these releases.

You can read the Plaintiffs' Complaint at [\[website\]](#).

6. How do Old Carco, Behr, and Aramark answer?

Old Carco, Behr, and Aramark deny Plaintiffs' allegations.. Old Carco, Behr, and Aramark maintain that the alleged contamination originates, at least in whole or in part, from other sources, and that they undertook reasonable investigation and remediation efforts..

7. Has the Court decided who is right?

Neither the Court nor a jury has decided whether Old Carco, Behr, Aramark, and/or the Plaintiffs is correct. By certifying issues and issuing this Notice, the Court is not suggesting that the Plaintiffs will win or lose this case. The Plaintiffs must prove their claims at the Issues Trial scheduled to commence on July 26, 2021.

8. What are the Plaintiffs asking for?

The Plaintiffs are asking that each of the Certified Issues be decided in their favor and adversely to Old Carco, Behr, and Aramark.

9. Is there any money available now?

No. There is no money or benefits available now because Old Carco, Behr and/or Aramark deny they are liable for any claimed damages, and there has been no decision that Old Carco, Behr, and/or Aramark did anything wrong or that any allegedly wrongful conduct resulted in compensable property damage. There is no guarantee that money or benefits will ever be awarded.

YOUR RIGHTS AND OPTIONS

You have to decide by [DATE] whether to allow the jury's answers to the Certified Issues to be binding on you, whether they are favorable or unfavorable to your claim, or ask to be excluded. You have to decide this now!

10. What happens if I do nothing at all?

If you do nothing now, regardless of whether the Plaintiffs win or lose the Issues Trial, then you will be bound by whatever outcome is reached on the Certified Issues.

11. Why would I ask to be excluded?

If you already have your own lawyer and lawsuit related to vapor intrusion against Old Carco, Behr, and/or Aramark, and you want to continue with it without the benefits and risks of having the answers to the Certified Issues treated as binding on you, then you must ask to be excluded by the [date] deadline for doing so. If you exclude yourself—which is sometimes called “opting-out”—you will not benefit from any beneficial ruling that may be reached on the Certified Issues. However, you may then be able to sue or continue to sue Old Carco, Behr, and/or Aramark without being bound by any adverse ruling on any of the Certified Issues. If you exclude yourself, you will not be legally bound by the judgments in this action.

If you start your own lawsuit against Old Carco, Behr, and/or Aramark after you exclude yourself, you will have to hire your own lawyer for that lawsuit, and you will have to prove your claims. If you do exclude yourself so you can start or continue your own lawsuit against Old Carco, Behr, and/or Aramark, then you should talk to your own lawyer soon, because your claims may be subject to a statute of limitations, or other defenses, which will forever bar your claim.

12. How do I ask the Court to exclude me?

To ask to be excluded, you must send a signed “Exclusion Request” form by regular United States mail, stating that you want to be excluded from *In re Behr Dayton Thermal Products LLC*. Your Exclusion Request **MUST be postmarked by [date]**. You must include your name and address, and the form must be signed by you. You must mail your Exclusion Request, to: *In re Behr Dayton Thermal Products LLC* Exclusions, [address]. You may get an Exclusion Request form at the website, [website]; or, you may use the form below.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

If you do not ask to be excluded, then in all proceedings on the Certified Issues, you will be represented by Plaintiffs' Counsel: Douglas D. Brannon, Esq. of Brannon & Associates, Dayton, Ohio; Kenneth M. Suggs of Janet, Janet & Suggs, LLC, Columbia, South Carolina; Patrick A. Thronson, Esq. of Janet Jenner & Suggs, LLC, Baltimore, Maryland; and Steven J. German, Esq. and Joel M. Rubenstein, Esq. of German Rubenstein LLP, New York, New York. More information about these law firms, their practices, and their lawyers' experience is available at branlaw.com; jjsjustice.com; and germanrubenstein.com.

If you choose not to be excluded, then you will not have to pay for Plaintiffs' Counsel's representation of you. If Plaintiffs are successful at the Issues Trial and you subsequently obtain a financial judgment or settlement relative to this case, you may be responsible for paying a portion of the financial award and reasonable case costs to your attorney(s).

14. Should I get my own lawyer?

You have the right to select a lawyer to represent you in this proceeding. If you have signed a retainer agreement with one or more of the law firms serving as Plaintiffs' Counsel, you do not need to hire another lawyer for purposes of this proceeding. If you have not signed an agreement with one or more of the law firms serving as Plaintiffs' Counsel, you may, but do not need to, hire a different lawyer at this time, because Plaintiffs' Counsel is working on your behalf with respect to the Certified Issues. If Plaintiffs are successful at the Issues Trial, Plaintiffs' Counsel may continue to represent you—or, if you wish, a different attorney who has not been involved in the litigation—may be available to represent you in later proceedings to determine whether you are entitled to any damages, and, if so, the amount of your damages. These proceedings may or may not occur, depending on the outcome of the Issues Trial.

THE ISSUES TRIAL

The Court has scheduled the Issues Trial to decide the Certified Issues in this case.

15. How and when will the Certified Issues be decided?

As long as the case is not otherwise resolved, Plaintiffs' Counsel will have to prove at trial that some or all of the Certified Issues should be answered in Plaintiffs' favor.

The Issues Trial is scheduled to begin on Monday, July 26, 2021, in the United States District Court for the Southern District of Ohio, Walter H. Rice Federal Building and U.S. Courthouse, 200 West Second Street, Dayton, Ohio 45402, Courtroom 1. During the Issues Trial, a jury will hear evidence and make a decision on some or all of the Certified Issues.

16. Do I have to come to the Issues Trial?

You do not need to attend the Issues Trial. Plaintiffs' Counsel will present the case for the Plaintiffs, and Old Carco, Behr, and Aramark will present the defenses. You or your own lawyer are welcome to come at your own expense.

17. Will I get money as a result of the Issues Trial?

No. The Issues Trial is only meant to answer the Certified Issues. After the Certified Issues are answered, each individual will be responsible for pursuing litigation on their own behalf if they so choose. If you have previously signed a retainer agreement to be represented by an attorney regarding the claims in this lawsuit, you and your attorney will make a determination as to whether and how to proceed. There is no guarantee that any money will ever be awarded.

GETTING MORE INFORMATION

18. Are more details available?

Yes. Visit the website, [website], where you will find the Court's Decision and Entry Overruling in Part and Sustaining In Part Plaintiffs' Amended Renewed Motion for Class Certification and Conditionally Certifying Various Issues for Class Treatment Under Federal Rule of Civil Procedure 23(c)(4); the Plaintiffs' Complaint; the Defendants' Answers; and an Exclusion Request form. You may also speak to one of the lawyers by calling [number] or writing to [address]. Do not contact the Court directly about this lawsuit or this Notice.